



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO. 234 OF 2016

FESTUS RUBARA MUKIRI.....1ST CLAIMANT

PURITY MARY KYUMBU.....2ND CLAIMANT

BENEDICT MAKUTHU KITHEKA.....3RD CLAIMANT

VERSUS

EUNICE KAMENE KIEMA.....1ST RESPONDENT

CHRISTINE KATUNGI.....2ND RESPONDENT

CHRISTOPHER MUTINDA.....3RD RESPONDENT

THE LABOUR OFFICER, KITUI COUNTY.....4TH RESPONDENT

AND

REGISTRAR OF TRADE UNIONS.....INTERESTED PARTY

(Before Hon. Justice Byram Ongaya on Friday, 21st July, 2017)

JUDGMENT

The claimants filed the memorandum of claim on 19.10.2016 through C.M King'ori & Company Advocates. The claimants prayed for judgment against the respondent for:

- a) A declaration that the branch elections held on 05.10.2016 and the results thereof in respect of Kitui branch of the Union of Kenya Civil Servants were unlawful, irregular, not credible, and against the constitution of the union.
- b) An order nullifying and quashing the said elections and the results thereof.
- c) In alternative, an order for scrutiny and recount of votes cast in the said elections for determination of the lawful results.
- d) Costs and interest.

The respondents filed the memorandum of response dated 02.05.2017 through A.M. Njagi, State Counsel,

for the Attorney General. The respondents prayed that the suit be dismissed with costs.

There is no dispute that there were elections held on 05.10.2016 for the union's Kitui branch.

The claimant's case is that the elections were not valid as they were irregularly conducted with no credibility. In particular, the voters were not verified and the list of eligible voters was not used and the winners were mysteriously announced. Further, the presiding officer was not properly appointed.

The court has considered the pleadings, the evidence and all material on record. The evidence was that the elections were to be conducted as per the circular by the union's national office dated 06.09.2016 and the list of approved candidates conveyed by the letter dated 30.09.2016. The court finds that contrary to the prescriptions in the letters, the evidence on record revealed as follows:

- a) Some candidates were picked on the voting floor contrary to the approved list of candidates that was provided. RW confirmed that he used his discretion to allow candidates from opposing camps but clearly without authority to do so. The 1st, 2nd and 3rd respondents had not been in the approved list of candidates but they were purportedly elected at the said election. RW confirmed that he ignored the list of approved candidates as provided by the union's national office.
- b) The register of voters was not used as expected as verification of voters using the last payslip and identification cards was not done for some voters. RW confirmed that he created his own register at the voting venue and used it for the purpose and he never marked those who voted with ink as was required.
- c) Some of the persons who voted were not marked by indelible ink so that some voted more than once. RW confirmed that he had no ink to mark persons who voted so as to prevent voters from voting more than once.
- d) The presiding officer RW confirmed that he had no official appointment to preside at the elections as was required but he had been approached by some branch officials with a request to preside and he agreed to do so.
- e) RW confirmed that he was not a labour officer and therefore he knew he was not competent to preside at the elections.

The court has considered the evidence and returns that the elections were not held as per Article 18(3) of the constitution of the union which states that branch officials and committee members shall be elected directly by members in the respective branches for a five year term and shall be eligible for re-election. In particular the court finds that it is impossible to show that the members elected the alleged winners in absence of proper use of the available register in verifying the voters so as to ensure that only eligible persons voted and only once at the said elections. The court returns that the elections were not credible at all because the presiding officer was incompetent and he improperly used his discretion to create a voters register and a list of candidates. The elections were a sham and cannot be allowed to prevail as they cannot have been fair with the incompetent presiding officer who was appointed by some of the persons who turned out to purport to have won the elections. Accordingly, the claimants' suit must succeed.

In conclusion, judgment is hereby entered for the claimants against the respondents for:

- a) The declaration that the branch elections held on 05.10.2016 and the results thereof in respect of Kitui branch of the Union of Kenya Civil Servants were unlawful, irregular, not credible, and against the constitution of the union.
- b) The order nullifying and quashing the said elections and the results thereof together with the registration of the persons allegedly elected thereat.
- c) The respondents to pay the claimants' costs of the suit.

d) For avoidance of doubt, the union's Kitui Branch elections are carried out afresh, forthwith, and in accordance with the relevant law and applicable provisions of the union's constitution and rules including provisions of section 34 of the Labour Relations Act, 2007.

Signed, dated and delivered in court at **Nyeri** this **Friday, 21st July, 2017**.

BYRAM ONGAYA

JUDGE